92-1946

No.

Supreme Court, U.S.
FILED
JUN 1 1993
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1993

WARD PETROLEUM CORPORATION, et al.,

Petitioners,

vs.

THE OKLAHOMA CORPORATION COMMISSION, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF OKLAHOMA, DIVISION III

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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June, 1993

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OPINIONS AND ORDER RELIED UPON

IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA

Tuesday, March 2, 1993

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

76,720 Federal Deposit Insurance Corporation, as Manager of Federal Savings & Loan Insurance Corporation Resolution Fund in its capacity as receiver for Homestead Savings & Loan Association, Woodward, Oklahoma v. Anita M. Brady, an individual.
Certiorari denied.
CONCUR: Lavender, V.C.J., Simms, Hargrave, Opala, Wilson, Summers, Watt, JJ.
DISSENT: Hodges, C.J.

Kauger, J. dissenting.

I would grant certiorari to address the question of first impression.

77,130 (consolidated with 76,567) Jacqueline Gordon v. Tony Jack Lyons.
Certiorari denied.
CONCUR: Hodges, C.J., Lavender, V.C.J., Simms, Wilson, Summers, JJ.
DISSENT: Hargrave, Opala, Kauger, Watt, JJ.

77,479 Precision Rubber & Plastic, Inc., a corporation v. Continental Insurance Company et al.
Certiorari denied.
All Justices concur.

77,842 Karen Craven v. Susie Justice.
Certiorari denied.
CONCUR: Hodges, C.J., Lavender, V.C.J., Simms, Wilson, Kauger, Summers, Watt, JJ.
DISSENT: Hargrave, Opala, JJ.

78,064 Franks & Son, Inc. v. Town of Big Cabin.
Certiorari denied; appellee's motion for an attorney's fee denied.
All Justices concur.

78,186 Jim H. Waggoner and Wanda Waggoner d/b/a J&W Construction v. State of Oklahoma ex rel. Oklahoma Employment Security Commission.
Certiorari denied.

CONCUR: Hodges, C.J., Lavender, V.C.J., Simms, Hargrave, Opala, Kauger, Summers, Watt, JJ.
DISSENT: Wilson, J.

78,201 Ward Petroleum Corporation, Verlan W. Harrell et al. v. The Oklahoma Corporation Commission, The Louisiana Land & Exploration Company et al.
Certiorari denied.
All Justices concur.

78,204 Jeriann Schucker v. David R. Schucker.
Certiorari denied.
All Justices concur.

78,646 Monumental General Life Insurance Company v. Jamie J. Coppin, Administrator for the Estate of James Eudy.
Certiorari denied.
CONCUR: Hodges, C.J., Lavender, V.C.J., Hargrave, Wilson, Kauger, Summers, Watt, JJ.
DISSENT: Opala, J.
NOT PARTICIPATING: Simms, J.

/s/ Ralph B. Hodges
CHIEF JUSTICE

NOT FOR PUBLICATION

IN THE COURT OF APPEALS
OF THE STATE OF OKLAHOMA
DIVISION NO. III

WARD PETROLEUM CORPORATION, VERLAN W. HARRELL, NOVA ENERGY CORP., WHITBAR ENERGY LIMITED PARTNERSHIP, T. MICHAEL COCHERES, GILBERT TOMPSON, NORMAN R. GELPHMAN, LARRY E. BOYD, JAMES KUHLMAN, DAVID M. PULLING, THOMAS G. WYGANT, and VIERSEN OIL AND GAS COMPANY,	)	
Appellants,	)	
vs.	)	Case No. 78,201
THE OKLAHOMA CORPORATION COMMISSION, THE LOUISIANA LAND & EXPLORATION COMPANY, MACFARLANE COMPANY, TRIMBLE PROPERTIES, SANTA FE ENERGY OPERATING PARTNERS, L.P., AMOCO PRODUCTION COMPANY, AND HADSON PRODUCTION COMPANY,	)	
Appellees.	)	

APPEAL FROM AN ORDER
OF THE CORPORATION COMMISSION

AFFIRMED

Gregory L. Mahaffey,
J. Jayne Jarnigan,
MAHAFFEY & GORE,
Oklahoma City, OK, For Appellants

James W. George,
CROWE & DUNLEVY, P.C.
Oklahoma City, OK, For Appellees MacFarlane Company and Trimble Properties,

Richard A. Grimes,
GRIMES, GELDERS, ROWE & ANDERSON,
Oklahoma City, OK, For Appellee Louisiana Land and Exploration Company.

MEMORANDUM OPINION

Opinion by Robert L. Bailey, Presiding Judge:

Appellants, Ward Petroleum Corporation, Verlan W. Harrell, Nova Energy Corporation, Whitbar Energy Limited Partnership, T. Michael Cocheres, Gilbert Tompson, Norman H. Gelphman, Larry E.

Boyd, James Kuhlman, David M. Pulling, Thomas G. Wygant, and Viersen Oil and Gas Company (Appellants), seek review of an order of the Corporation Commission (Commission) denying Appellants' application to vacate, or alternatively reopen, previous Commission orders pooling interests in §23-T12N-R14W, I.M., Custer County, Oklahoma, by the unit. In this appeal, Appellants allege (1) the notices of the prior pooling orders and effect of elections thereunder were misleading, giving the impression of pooling by the well-bore and effectively denying Appellants due process for which relief should be granted, and (2) the doctrines of res judicata and collateral estoppel, arising from application of the Supreme Court's decision in Inexco Oil Company v. Oklahoma Corporation Commission, 767 P.2d

404 (Okl. 1988) (concerning the same interests and arguably addressing the same substantive issues presented in the instant case) do not apply to the facts of the present case. The central issue presented in this case and in Inexco concerned the effect of prior elections by mineral interest owners believing that the prior Commission orders pooled the subject interests by the well-bore, not by the unit, and the jurisdiction of the Commission to modify or alter those previous orders in accord with the parties' beliefs. In Inexco, the Supreme Court held (1) that a "pooling order when free of vitiating infirmity is res judicata," and (2) that "failure to make a showing [of change of conditions or knowledge of conditions necessitating repeal, amendment or modification of the

prior order(s)] renders an attempt to modify a prior order subject to the prohibition on collateral attacks set forth by the Legislature in 52 O.S. 1981 §111." Inexco, 767 P.2d at 405-6. The Supreme Court thus determined the rights and liabilities of the parties to the present action in and to the subject mineral interests, concluding in Inexco that the challenged order(s) pooled the unit as a unit, not by the well-bore, and that Commission exceeded its jurisdiction in so repooling the unit in the absence of evidence showing the requisite change of condition. See also, Amoco Production Company v. The Corporation Commission of the State of Oklahoma, 751 P.2d 203 (Okl.App. 1986) (approved for publication as modified by the Supreme Court, December 16, 1987).

In the present case, the Commission held that (1) the doctrines of res judicata and collateral estoppel prevented relitigation of the same issues presented in Inexco, and (2) that the parties to the present case, given notice and opportunity to be heard in the previous Inexco hearings, had not been denied due process, conclusions with which we agree. In that regard, the Commission entered detailed findings of fact and conclusions of law appended hereto adequately explaining the decision, and on that basis, finding no legal error in the order of the Commission, we hold the order of the Commission should be affirmed. Rule 1.202(d), Rules of Appellate Procedure in Civil Cases, 12 O.S. 1991, Ch. 15, App. 2.

The order of the Corporation Commission is therefore AFFIRMED.

HANSEN, V.C.J. and HUNTER, J. concur.

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

APPLICANT: WARD PETROLEUM CORPORATION, VERLAN W. HARRELL, NOVA ENERGY CORP., WHITBAR ENERGY LIMITED PARTNERSHIP, T. MICHAEL COCHERES, GILBERT TOMPSON, NORMAN R. GELPHMAN, LARRY E. BOYD, JAMES H. KUHLMAN, DAVID M. PULLING, THOMAS G. WYGANT and VIERSEN OIL AND GAS COMPANY	CAUSE CD NO. 149617
RELIEF SOUGHT: TO VACATE ORDER NO. 260474, (Cause CD No. 108567), OR, IN THE ALTERNATIVE TO REOPEN CAUSE CD NO. 108567 AND MODIFY ORDER NO. 260474	ORDER NO. 358995
LAND COVERED: SECTION 23, TOWNSHIP 12 NORTH, RANGE 14 WEST, CUSTER COUNTY, OKLAHOMA.	

ORDER

This cause came on for hearing before Jodi Levine, Administrative Law Judge for

the Corporation Commission of the State of Oklahoma, on June 27 and 28, 1990, July 20, 1990, and October 1 and 8, 1990, at 8:30 a.m. in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Commission for the purpose of taking testimony and reporting to the Commission.

At the time of the hearing, Gregory L. Mahaffey and J. Jayne Jarnigan, Attorneys, appeared for the Applicants, Ward Petroleum Corporation, Verlan W. Harrell, Nova Energy Corp., Whitbar Energy Limited Partnership, T. Michael Cocheres, Gilbert Tompson, Norman R. Gelphman, Larry E. Boyd, James E. Kuhlman, David M. Pulling, Thomas G. Wygant and Viersen Oil

and Gas Company; Richard A. Grimes, Attorney, appeared for The Louisiana Land and Exploration Company; John C. Moricoli, Jr., Attorney, appeared for Greenleaf Energy Corp., Richard D. Veal, Raymond Dale Shipley and Smack Dab Limited; James W. George, Attorney, appeared for MacFarlane Company and Trimble Properties; J. Fred Gist, Attorney, appeared for Santa Fe Energy Operating Partners, L.P.; John R. Reeves, Attorney, appeared for Amoco Production Company; and Lance Tolson, Assistant Deputy General Counsel for Conservation, filed notice of appearance for the Commission.

The Initial Report of the Administrative Law Judge was filed on January 22, 1991, recommending denial of

the Application. The Applicants, joined by Greenleaf Energy Corp., Richard D. Veal, Raymond Dale Shipley and Smack Dab, Limited, timely filed an appeal to that Report.

The Appeal to the Initial Report of the Administrative Law Judge came on for hearing on March 1, 1991, before Randolph S. Specht, Appellate Administrative Law Judge.

At the time of the hearing, Gregory L. Mahaffey and J. Jayne Jarnigan, Attorneys, appeared for the Applicants, Ward Petroleum Corporation, Verlan W. Harrell, Nova Energy Corp., Whitbar Energy Limited Partnership, T. Michael Cocheres, Gilbert Tompson, Norman R. Gelphman, Larry E. Boyd, James E. Kuhlman, David M.

CAUSE CD NO. 149617 -
WARD PETROLEUM CORPORATION, ET AL.

Pulling, Thomas G. Wygant and Viersen Oil and Gas Company; Richard A. Grimes, Attorney, appeared for The Louisiana Land and Exploration Company; John C. Moricoli, Jr., Attorney, appeared for Greenleaf Energy Corp., Richard D. Veal, Raymond Dale Shipley and Smack Dab Limited; James W. George, Attorney, appeared for MacFarlane Company and Trimble Properties; J. Fred Gist, Attorney, appeared for Santa Fe Energy Operating Partners, L.P.; John R. Reeves, Attorney, appeared for Amoco Production Company; Gordon Brown, Attorney, appeared Hadson Petroleum Company; and Lance Tolson, Assistant Deputy General Counsel for Conservation, filed notice of appearance for the Commission.

CAUSE CD NO. 149617 -
WARD PETROLEUM CORPORATION, ET AL.

The Appellate Report of the Administrative Law Judge was filed on March 25, 1991, recommending that the Initial Report of the Administrative Law Judge be affirmed. The Applicants, joined by Greenleaf Energy Corp., Richard D. Veal, Raymond Dale Shipley and Smack Dab, Limited, timely filed an appeal to that Report.

The Appeal to the Appellate Report of the Administrative Law Judge came on for hearing on April 23, 1991, before the Commission En Banc.

At the time of the hearing, Gregory L. Mahaffey and J. Jayne Jarnigan, Attorneys, appeared for the Applicants, Ward Petroleum Corporation, Verlan W. Harrell, Nova Energy Corp., Whitbar Energy

Limited Partnership, T. Michael Cocheres, Gilbert Tompson, Norman R. Gelphman, Larry E. Boyd, James E. Kuhlman, David M. Pulling, Thomas G. Wygant and Viersen Oil and Gas Company; Richard A. Grimes, Attorney, appeared for The Louisiana Land and Exploration Company; John C. Moricoli, Jr., Attorney, appeared for Greenleaf Energy Corp., Richard D. Veal, Raymond Dale Shipley and Smack Dab Limited; James W. George, Attorney, appeared for MacFarlane Company and Trimble Properties; J. Fred Gist, Attorney, appeared for Santa Fe Energy Operating Partners, L.P.; John R. Reeves, Attorney, appeared for Amoco Production Company; Gordon Brown, Attorney, appeared Hadson Petroleum Company; and Lance Tolson, Assistant

Deputy General Counsel for Conservation, filed notice of appearance for the Commission.

After hearing arguments of counsel, reviewing the Initial Report of the Administrative Law Judge, the Appellate Report of the Administrative Law Judge and the record in this cause, the Commissioners voted 3-0 to affirm the recommendations of the Administrative Law Judge and Appellate Administrative Law Judge and deny the application. In support of such conclusion, the Commission finds as follows:

FINDINGS

(1) This is an application of Ward Petroleum Corporation, et al. seeking to vacate Order No. 260474, a pooling order

covering Section 23, Township 12 North, Range 14 West, Custer County, Oklahoma, or, in the alternative, to reopen Cause CD No. 108567 and modify Order No. 260474 to give new elections to the respondents.

(2) The Administrative Law Judge conducted an adjudicative inquiry into the sufficiency of the Applicant's search for the identity and whereabouts of those respondents whose addresses are unknown for service of process and could not be ascertained with due diligence. Upon an examination of the record and proof of publication, the Administrative Law Judge found the process to be proper. The Commission finds that the Applicant conducted a meaningful search of all reasonably available sources at hand to

ascertain the whereabouts of those entitled to notice but who were served solely by publication. Notice has been given as required and the Commission has jurisdiction of the subject matter and the parties.

(3) The following is a summary of facts presented at the original hearing in this cause:

On September 20, 1983, Inexco Oil Company (hereinafter "Inexco") filed an application in Cause CD No. 108567 to pool oil and gas interests and adjudicate rights and equities of owners in Section 23, Township 12 North, Range 14 West, Custer County, Oklahoma. The Application described certain common sources of supply and cited the existence of 640-acre

drilling and spacing units for those common sources of supply in Section 23.

The Notice of Hearing stated that the Applicant was requesting that the Commission pool and adjudicate the rights and equities of oil and gas owners in the named common sources of supply underlying said Section 23. The Notice specified a hearing date, described the place of hearing and advised all interested parties of their right to appear and take part in the hearing.

The cause was heard on April 20, 1984, at which time Inexco, Ward Petroleum Corporation and Viersen & Cochran appeared. Viersen & Cochran owned an unleased mineral interest in Section 23. Ward owned an oil and gas leasehold

interest in that section. Ward protested the cause on the basis of fair market value. A Report of the Trial Examiner recommended the application on the terms testified to by Inexco. Ward initially filed, but then withdrew, exceptions to that Report. Order No. 260474 was issued on June 6, 1984, providing the standard 15-day election period.

The Commission issued Statement of Policy No. 45 on May 3, 1984. Order No. 260474 has no reference to that policy statement.

Prior to the hearing in Cause CD No. 108567, Inexco filed a separate pooling application in Cause CD No. 114422. That cause also covered Section 23 but named as its sole respondent

Liberty National Bank & Trust Co. of Oklahoma City, Trustee. That respondent was not named in Cause CD No. 108567. Inexco dismissed Cause CD No. 114422 on June 7, 1984, after negotiating a wellbore farmout agreement with the trustee's lessee, Anson Corporation.

The Applicants, or their predecessors in interest, elected not to participate in the initial well covered by Order No. 260474, opting instead for alternatives provided in the Order. Inexco then drilled that well within the 180-day term provided by said Order. The well was completed in the Des Moines common source of supply.

After Viersen & Cochran elected to take cash bonus under the terms of

Order No. 260474, it leased its mineral interest in Section 23 to Nova Energy Corporation. Nova assigned a portion of that interest to Verlan Harrell, Richard D. Veal, James H. Kuhlman, David M. Pulling, Greenleaf Energy Company, Raymond Shipley and Smack Dab, Ltd.

Subsequently, Ward filed a pooling application in Cause CD No. 122874 in connection with a proposed increased density well in Section 23. Inexco protested that application, arguing that Order No. 260474 was a unit pooling. Ward, supported by Greenleaf Energy Company, Nova Energy Corp., David M. Pulling, James E. Kuhlman and Thomas Wygant, argued that such Order was wellbore in scope. The Ward group wanted

new elections for the second well.

The Initial Hearing Officer ruled in Ward's favor citing Policy No. 45 as the primary consideration. The Commission upheld the Hearing Officer and issued Order No. 277146 on April 25, 1985. Order No. 277146 re-pooled Section 23 and gave new elections to all respondents. Ward and Nova were given operational rights to the exclusion of Inexco.

Inexco appealed Order No. 277146 to the Supreme Court of Oklahoma. Ward, Nova, Greenleaf, Wygant, Pulling and Kuhlman opposed Inexco in the appeal.

On July 5, 1988, the Supreme Court of Oklahoma issued an opinion in the appeal by Inexco. That opinion reversed Commission Order No. 277146, holding that

the original pooling Order No. 260474 was a unit pooling. The Court held the election not to participate in the initial well divested the Applicants of their working interest in Section 23. Order No. 277146 was determined to be an impermissible collateral attack on the original order.

A Petition for Writ of Certiorari was filed with the Supreme Court of the United States by Ward, Nova, Verlan W. Harrell, Lou Ward, Richard Veal, Raymond Dale Shipley, Smack Dab, Ltd., Norman R. Gelphman, Thomas G. Wygant, David M. Pulling, James E. Kuhlman, T. Michael Cocheres, Gilbert Tompson, Whitbar Energy Limited Partnership, Larry E. Boyd and James Hasenbeck. The Petition claimed

that insufficient notice had been given of the unit nature of Order No. 260474. In addition, the Petitioners claimed to have been misled by the combination of Policy No. 45 and the express terms of Order No. 260474.

On April 24, 1989, the Supreme Court of the United States denied the Petition for Writ of Certiorari. On May 8, 1989, the Oklahoma Supreme Court ordered that mandate issue in the Inexco appeal. On August 25, 1989, the application in this cause was filed.

(4) At the hearing, the Applicant presented the testimony of Michael Cocheres, a landman with Ward Petroleum Corporation. He testified that Ward was pooled by Inexco in Cause CD No. 108567.

He stated there was no testimony given on behalf of Inexco concerning a "wellbore" farmout. He has seen an agreement between Inexco and Anson Company limited to the initial wellbore only. Order No. 260474 did not contain the same language as did that agreement. He did not know when Anson and Inexco finalized their agreement. Mr. Cocheres was suspicious that the agreement was made in a manner to avoid presenting testimony concerning the wellbore terms. However, he had no actual knowledge to support such suspicion. He did not have any knowledge of false testimony presented on behalf of Inexco.

The testimony of Mr. Cocheres continued that Ward Petroleum Corporation elected cash bonus under Order No. 260474,

as did Ward Exploration Company for 75% of its interest. Mr. Cocheres and Gilbert Tompson acquired their interest in Section 23 from Ward Petroleum Corporation. All such parties had received from Inexco an offer to farmout in Section 23 on a wellbore basis. However, based on their belief that the pooling order was also wellbore only, the offer was rejected. The cash bonus was elected because Ward did not place any value on a well to be drilled at Inexco's proposed location. That bonus was not, in his opinion, representative of fair market value for unit rights. However, fair market value was the primary issue contested by Ward at the hearing preceding issuance of the order.

CAUSE CD NO. 149617 -
WARD PETROLEUM CORPORATION, ET AL.

Mr. Cocheres stated that prior to the issuance of Statement of Policy No. 45 ("Policy 45") Ward believed pooling orders were wellbore in scope. Policy 45 confirmed this belief. If Ward had known pooling orders would be construed as unit orders, it would not have elected out of the initial well. Inexco did not inform him that their opinion was different until after the election was made by Ward, this being conveyed by a letter dated December 31, 1984. After the Commission entered Order No. 277146, the second pooling order in Section 23, Ward spent money in reliance on Policy 45 and the language of Order No. 260474.

On cross-examination, Mr. Cocheres stated that Inexco appealed Order

No. 277146 to the Oklahoma Supreme Court. Ward and Nova had been designated as alternative operators thereunder. He was aware at that time that Inexco considered the first order to be a unit order.

In his opinion the notice given in Cause CD No. 108567 was misleading. It did not specifically state the intent to obtain a unit pooling order. He admitted it did provide for adjudication of rights and equities of parties pooled thereby. He was never misinformed of the hearing date, nor did the notice state the pooling order would be wellbore only.

In the opinion of Mr. Cocheres the use of the word "well" in Order No. 260474 made the order misleading. He believed Ward had not erred in its

interpretation of such order. Rather, the error was made by the Commission in issuing Policy 45. He felt that Ward was misled by the form of the order. In his opinion, Inexco should have informed Ward of Inexco's interpretation of the order prior to December of 1984.

Mr. Cocheres was aware that Policy 45 had been withdrawn by the Commission prior to the decision in Amoco Production Co. v. Corporation Com'n of State of Okla., 751 P.2d 203 (1986). Although the facts as presented above were known at that time, Ward chose not to file this application until Inexco's appeal to Order No. 277146 resulted in a decision adverse to Ward.

(5) The Applicant presented

testimony of David Pulling, a petroleum geologist. He claims a working interest in Section 23. He was pooled by Order No. 260474 but chose not to participate. He did not like the location of Inexco's proposed well. He believed his failure to participate would only result in relinquishment of wellbore rights. This belief was based upon Policy 45 and the language of Order No. 260474.

On cross-examination he admitted knowing of the hearing which preceded Order No. 260474. However, he chose not to attend that hearing. He turned down the wellbore farmout offered by Inexco because his reading of the order led him to conclude it was limited to the initial wellbore.

(6) Thomas G. Wygant, a petroleum engineer, testified for the Applicant. He claims a working interest in Section 23. He elected cash bonus under Order No. 260474 as to one-half of his interest, and participated with the rest. He made his election relying upon Policy 45 and the language of the order. He made a business decision to take cash bonus and turn down the wellbore farmout offered by Inexco. Use of the work well in the order led him to the conclusion it was limited to the wellbore.

On cross-examination, Mr. Wygant admitted knowledge of the hearing which led to Order No. 260474. No one prevented his attending, but he chose not to attend. He did not review the pooling statutes

after reading Policy 45, nor did he ask for advice from an attorney concerning the election under Order No. 260474.

(7) Applicants called Robert E. Goldfield, an Administrative Law Judge of the Commission. He was formerly director of the Office of Administrative Proceedings at the Commission. During that period he participated in the preparation of Policy 45. He headed up several meetings with the Commissioners to discuss wellbore versus unit poolings. The policy statement was disseminated to the Mineral Bar and oil and gas industry by mailing to certain parties shown on a Commission mailing list. In addition, copies of the policy were left on a table outside of the Office of Administrative

Proceedings office.

After issuance of Policy 45, he advised the Commission hearing officers to exclude use of the word "unit" or "wells" from pooling orders. Only the word "well" could be used thereafter. Prior to issuance of Policy 45 the Commissioners felt they had authority to pool either by the unit, or by the wellbore.

On cross-examination, Mr. Goldfield stated that the issuance of Policy 45 had been a legislative, rather than an adjudicative, act of the Commission. However, he did believe the policy would impact upon the quantity of rights relinquished under a pooling order, and was a predetermination of owners' rights in a unit. No advance notice of

Policy 45 was given. The first notice was the mailing referred to above. The emphasis of his meetings with the Commissioners was related to the statutory language of 52 O.S. §87.1(e), and the economic impact of the policy.

(8) Jeff Smith, a landman with Anson Company, was called by the Applicant. To his recollection Anson believed Policy 45 was the rule of the Commission, and followed it. He stated that Anson tried to buy a lease from Viersen Oil and Gas after Viersen elected cash bonus under Order No. 260474. It was their belief Viersen had not relinquished all working interest rights by virtue of such election.

On cross-examination, Mr. Smith

admitted to some concern over the interest Viersen had available to lease. Anson had requested a warranty clause in order to protect against the possibility of Order No. 260474 being held to be a unit order concerning the wellbore farmout to Inexco. He did not recall Anson entering into an oral agreement with Inexco prior to May 17, 1984. A letter of that date to Anson's partners indicated no final agreement had been made. He admitted such letter showed the intention of Anson to let Inexco take the risk of drilling the initial unit well yet allow Anson to participate in future wells.

(9) James Kuhlman, a landman, testified for the Applicant. He claims a working interest in Section 23. He

elected not to participate in Inexco's well under Order No. 260474 based upon the language of that order and upon Policy 45.

He was aware of the notice which led to the order, but felt it was not detailed enough to forewarn of a unit pooling. He felt that pooling orders were wellbore in scope prior to Policy 45, but issuance of the policy confirmed such fact. He had participated in the Albright Farms well and spent money thereon.

On cross-examination, Mr. Kuhlman stated he was notified of the hearing which led to Order No. 260474. He did not attend because of several reasons. Ward agreed to appear on his behalf. Additionally, he had felt since 1977 that pooling orders were wellbore only.

Finally, he was not going to participate in the Inexco well. He elected not to push for the location he felt was proper.

(10) Verlan Harrell also testified for the Applicants. He claims an interest in Section 23 through a lease from Viersen & Cochran. That lease was acquired after the 15-day election period expired in Order No. 260474. Based upon such fact, Mr. Harrell was excused to allow the Administrative Law Judge to consider an objection to the presentation of his testimony.

(11) The Applicants called John Glasco, a landman employed by Inexco in April of 1984. In that capacity he initiated the pooling which led to Order No. 260474. He did not recall when Inexco

and Anson reached agreement concerning a wellbore farmout in Section 23. He did recall offering a wellbore farmout to Ward. After the issuance of Policy 45 he did not initiate an action to vacate the policy, nor was he aware of Inexco having initiated such action. He did not recall why Viersen & Cochran were not offered a wellbore farmout. He did not participate in drafting Order No. 260474.

On cross-examination, Mr. Glasco could not recall Viersen requesting a wellbore farmout. He did not have any recollection of negotiating with representatives of Anson at the Commission on April 20, 1984.

(12) Applicant had subpoenaed Alice S. Mitchell to testify. She was a

division attorney with Inexco in 1984. She represented Inexco at the hearing on April 20, 1984. She recalled being on the Commission mailing list at that time. She probably saw Policy 45 shortly after it was issued. She recalled at some point in time after Policy 45 was issued that the Commission returned orders to have the word "well" inserted. She had prepared Order No. 260474. She did not recall why the order used the word "well."

(13) Mr. Verlan Harrell was recalled after the Administrative Law Judge ruled he could testify on the issue of what was reasonable reliance in relation to the order and Policy 45. He stated he learned of the policy shortly after its issuance. He had discussions relating to the policy

prior to that time with Hamp Baker, Chairman of the Commission. It was Mr. Harrell's belief that Policy 45 created wellbore pooling. Prior to acquiring a lease on Viersen & Cochran's interest in Section 23 a determination was made as to the election of Viersen under Order No. 260474.

On cross-examination, Mr. Harrell said he thought poolings were by the unit prior to Policy 45. He had been told by his attorney prior to the policy that poolings were wellbore only. He assumed the policy had the effect of an order. He also thought hearings were conducted prior to its issuance. He was aware that there were appeals pending in the Oklahoma Supreme Court relating to the

issue of unit vs. wellbore policy when Policy 45 was issued. He could not wait 2 or 3 years for the ruling to issue by that Court.

Mr. Harrell was not allowed to testify as to his reliance upon Policy 45 in purchasing a lease from Viersen. An offer of proof was made concerning Mr. Harrell's reliance upon the policy in buying that lease, and in initiating a proposal for the Albright Farms well.

(14) As their final witness, the Applicants called Richard D. Veal, a landman. He was not allowed to testify concerning his reliance upon Policy 45 in purchasing a portion of a lease from Viersen. An offer of proof was made alleging that he paid cash bonus for such

lease in reliance upon such policy, and that he participated in the Albright Farms well with such leasehold. Mr. Veal stated he wanted the Commission to address the issue of transactions made after the hearing on a pooling application. He was of the opinion all respondents should have been offered a wellbore farmout.

On cross-examination, Mr. Veal admitted that he had entered into operating agreements with respondents after hearings on pooling applications. In those cases he did not reopen the cause to offer testimony relating to such fact.

(15) The Protestant, The Louisiana Land and Exploration Company, called Von Martin as its only witness. He was land manager for Inexco in 1984, and supervised

John Glasco. He had attended the hearing on April 20, 1984 and did not recall any discussions with Anson representatives on that day. He did not know of any deal not to reveal the wellbore farmout from Anson. Policy 45 did not change his opinion that poolings were unit in scope. He did not believe Policy 45 was an authorized act of the Commission. He did not tell any of the Applicants what his opinion was in regard to poolings. He did nothing to prevent any party from appearing at the hearing on April 20, 1984. He testified that Inexco paid cash bonus under Order No. 260474 to Ward Petroleum Corporation, James Kuhlman, David Pulling, Thomas Wygant and Viersen & Cochran. He identified a series of documents relating

to the appeal by Inexco of Order No. 260474. He outlined the chain of title for each of the Applicants and the parties represented by Mr. Moricoli. All such parties' chain of title commenced either with Viersen & Cochran or Thomas Wygant. Wygant had leases from the Albright family. Inexco offered Ward a wellbore farmout because of Ward's concern over location of the Albright Farms well. Viersen never requested a wellbore farmout.

On cross-examination, Mr. Martin stated he did not know if negotiations took place on April 20, 1984 between Inexco and Anson. He did not communicate to any of the Applicants concerning Inexco's position on unit pooling before

the letter in December of 1984. The wellbore farmout was offered to Anson because of their concern on location of the initial well. He did not recall discussions with Viersen concerning well location. It was not his general practice to give well information to non-participating respondents.

(16) Upon conclusion of testimony, Mr. Mahaffey made an offer to tender back bonus paid to Viersen under Order No. 260474 in the event this Application was recommended.

(17) The Administrative Law Judge took briefs on the issues in the cause. Thereafter, she issued her Report recommending denial of the Application. In support of such recommendation, she

found as follows:

(A) The doctrines of res judicata and collateral estoppel apply and the Applicants are precluded from raising the issues raised in the Application. The documents presented as Exhibit 85 reveal the prior appeal to the Oklahoma Supreme Court raised identical issues. The parties had a full opportunity to present all issues raised herein to the Supreme Court. That Court ruled against the Applicants in Inexco Oil Company v. Oklahoma Corp. Com'n, 767 P.2d 404 (Okla. 1988). These issue preclusion doctrines prohibit retrying issues which were raised,

considered and determined in a prior action; as well as issues not raised, but which properly could have been raised.

(B) Even if the Applicants were not precluded from trying the issues raised, their evidence does not support their claims. The Applicants did not prove a change in knowledge of conditions relative to the issuance of Order No. 260474. They did not establish any act of fraud sufficient to vacate such order. Nor did the Applicants show any facial invalidity relating to the Order.

(C) The parties had no right to rely upon Policy 45. The Supreme

Court of Oklahoma has determined such policy to be an arbitrary and capricious act of the Commission. The Court condemned the policy's attempt to circumvent the clear language in the pooling statute.

(D) The use of the word "well" in Order No. 260474 does not create a situation where detrimental reliance dictates vacation of the Order. The Supreme Court of Oklahoma has ruled that the use of such word does not form a basis for claiming a pooling is limited in scope.

(E) Any reliance placed upon either Policy 45 or the language of Order No. 260474 was at the risk of

the Applicants.

(F) The evidence clearly showed Applicants were not denied rights of due process. Order No. 260474 was entered based upon proper application and notice. No party was denied an opportunity to appeal and voice their view as to the scope of pooling orders. The Applicants, or their predecessors, chose not to raise such issue prior to issuance of the Order.

(18) The Commission adopts by reference herein the Initial Report of the Administrative Law Judge, as well as the recommendation of the Appellate Administrative Law Judge that such Report be affirmed. It is the opinion of the

Commission that the Applicants have failed to establish any basis for vacating or modifying Order No. 260474. To do so would violate the vested rights of the Protestants.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma as follows:

The Application of Ward Petroleum Corporation, Verlan W. Harrell, Nova Energy Corp., Whitbar Energy Limited Partnership, T. Michael Cocheres, Gilbert Tompson, Norman R. Gelphman, Larry E. Boyd, James H. Kuhlman, David M. Pulling, Thomas G. Wygant and Viersen Oil and Gas Company, seeking to vacate Order No. 260474, a pooling order covering Section

23, Township 12 North, Range 14 West, Custer County, Oklahoma; or, in the alternative, to reopen Cause CD No. 108567 and modify Order No. 260474, is hereby denied.

DONE AND PERFORMED this 31 day of July 1991.

CORPORATION COMMISSION OF OKLAHOMA

/s/ Bob Hopkins
Bob Hopkins, Chairman

/s/ Bob Anthony
Bob Anthony, Vice-Chairman

/s/ J.C. Watts, Jr.
J.C. Watts, Jr., Commissioner

BY ORDER OF THE COMMISSION:

/s/ Berdee S. Holt
Berdee S. Holt, Secretary

HAMP BAKER
COMMISSIONER

NORMA EAGLETON
COMMISSIONER

JAMES B. TOWNSEND
COMMISSIONER

OKLAHOMA
CORPORATION COMMISSION

JIM THORPE OFFICE BUILDING

OKLAHOMA CITY, OKLAHOMA 73105

TO: All Commission Staff and the Mineral Bar

FROM: Hamp Baker
Norma Eagleton
James B. Townsend

DATE: May 3, 1984

STATEMENT OF POLICY

The purpose of this Statement of Policy is to set forth, without reservation, this Commission's policy as to the question: Does a pooling order determine the rights and equities only as to the well which is proposed to be drilled under the order (pool per

wellbore) or does a pooling order determine the rights and equities as to the well proposed under the order as well as all possible increased density wells which might be drilled in the unit (pool per unit)?

"Pooling by the unit" is a question of legal interpretation and semantics. Since the statute only permits one well per drilling and spacing unit, the practical effect has been to pool by the wellbore despite the language found in 52 O.S. Supp. 1983, §87.1, which speaks to development of the unit as a unit. Recently, this Commission has broken with that practice. At the time of our decisions in those cases, seemingly compelling factual bases were presented for issuing an order which pooled not only the initial well but also any increased

density wells.

However, reflecting only those few orders which we have issued previously pooling per unit, this Commission has reevaluated that position. The question of whether pooling should be accomplished by the wellbore or by the unit in anticipation of the possibility of increased density wells, is, in the end, a question of interpretation of law; specific factual circumstances are irrelevant. As such, the Commission believes that it is important to the continuing vitality of the industry, especially with regard to increased drilling investment, to rely on this Commission's expertise and oversight capacity in adopting and stating categorically a uniform policy on which all elements of the industry can rely.

The policy of this Commission is to pool, without exception, by the wellbore for the following reasons:

1. Although 52 O.S. Supp. 1983, §87.1, speaks to development of the unit as a unit, it is also equally clear that, by the same statute, only one well is authorized per drilling and spacing unit.

2. In order for this Commission to authorize the drilling of additional wells on a unit - increased density wells - the spacing order authorizing only one well per unit must be amended.

3. By pooling per unit, development and the flow of participation dollars is being inhibited. Parties who would otherwise invest and participate in the drilling of developmental wells are precluded from such participation based on their, or their predecessors in interest,

decision regarding the initial well in the unit.

4. Due to the prospect of inhibited development and concomitant inhibited flow of participation dollars, the only alternative available is that of despacing. Such alternative is not desirable since such a scheme will only serve to leave spacing "windows" and therefore not serve to protect correlative rights.

5. The industry, mineral bar and mineral interest owners have a right to expect consistency in the decisions of this Commission. Following the Oklahoma Supreme Court's decision in Monson v. State ex rel. Oklahoma Corporation Commission, No. 57,867 (December 12, 1983), finding this Commission to be a functional analogue of a court of record,

it is of prime importance that this Commission provide some degree of certainty in its decision-making. However, this is not to say that this administrative agency intends to adhere strictly to the doctrine of stare decisis in its decision-making.

The Commission is also cognizant that three of the recent orders pooling as to the unit have been appealed to the Oklahoma Supreme Court. To the ends expressed in this Statement of Policy, it is our intention to move the Court to remand those cases to the Commission for further deliberation.

We would also specifically state that this Statement of Policy in no way relates to the drilling of substitute or twin wells. The issue which has been presented to us in such cases is whether there has

been a continuous operation in the drilling of a well; Amarex Inc. v. Baker, 655 P.2d 1040 (Okl. 1983); or whether some geologic or engineering reason exists which would necessitate the drilling of a substitute or twin well. As a separate issue, the possibility of the need for such well has been addressed on a case by case determination, based on the geologic and/or engineering evidence submitted. Such issue is not addressed nor is it concerned with the question presented herein.

/s/ Hamp Baker
HAMP BAKER, Chairman

/s/ Norma Eagleton
NORMA EAGLETON, Vice-Chairman

/s/ James B. Townsend
JAMES B. TOWNSEND, Commissioner

HB:NE:JBT/GH:alj/bl

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

APPLICANT: INEXCO OIL COMPANY	CAUSE CD NO. 108567
IN THE MATTER OF POOLING OIL AND GAS INTERESTS, DESIGNATING APPLICANT OR SOME OTHER PARTY OPERATOR AND ADJUDICATING THE RIGHTS AND EQUITIES OF OIL AND GAS OWNERS IN THE DES MOINES, TONKAWA, COTTAGE GROVE, ATOKA, MORROW, SPRINGER, CLEVELAND AND MARCHAND COMMON SOURCES OF SUPPLY UNDERLYING ALL OF SECTION 23, TOWNSHIP 12 NORTH, RANGE 14 WEST, CUSTER COUNTY, OKLAHOMA.	ORDER NO. 260474

REPORT OF THE COMMISSION

This Cause came on for hearing before Jodi B. Levine, Trial Examiner for the Corporation Commission of the State of Oklahoma, on the 20th day of April, 1984, at 9:00 a.m. in the Commission's

Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Commission for the purpose of taking testimony and reporting to the Commission.

At the time of the hearing, Alice S. Mitchell, Attorney, appeared for Inexco Oil Company; Michael Stack, Attorney, appeared for Ward Petroleum; Gordan D. Ryan, Attorney, appeared for Vierson & Cochran; and M. Keywood Deese, Deputy General Counsel for Conservation, filed notice of appearance.

The Trial Examiner heard this Cause and filed her report with the Commission. Ward Petroleum, filed Exceptions to the Report which were withdrawn prior to hearing on appeal. The Report has Been considered and the Commission therefore finds as follows:

FINDINGS

1. That this is the Application of Inexco Oil Company to pool and adjudicate the rights and equities of oil and gas owners in the Des Moines, Tonkawa, Cottage Grove, Atoka, Morrow, Springer, Cleveland and Marchand common sources of supply underlying all of Section 23, Township 12 North, Range 14 West, Custer County, Oklahoma as previously spaced by Order No. 197226. At the time of the hearing, the Morrow and Springer common courses of supply were dismissed, and Steve Knox and Samson Resources were dismissed as parties to the Cause.

2. That the Commission has jurisdiction over the subject matter herein; that notice has been given in all respects as required by law and by the rules of the Commission. That the

Applicant is the owner of an interest in the area covered by the Application. That the Applicant has furnished the Oklahoma Corporation Commission with a plugging agreement and surety or a financial statement as required by the law and by the rules of the Commission.

3. That the land described in paragraph 1 above is a drilling and spacing unit for the common courses of supply also named in paragraph 1, all heretofore Ordered by the Commission by Order No. 197226.

4. That Inexco Oil Company, an owner of the right to drill a well on said drilling and spacing unit and to develop and produce said common sources of supply, has not agreed with all of the other such owners in such drilling and spacing unit to pool their interests and to develop the

drilling and spacing unit and common sources of supply, and the Commission should issue an Order requiring such owners to pool and develop the drilling and spacing nit and common sources of supply covered hereby.

5. That Inexco Oil Company proposes to develop said unit and the common sources of supply therefor by the drilling of a well thereon and, to avoid the drilling of unnecessary wells and to protect correlative rights, all owners should be required to pool and develop the common sources of supply covered hereby, upon the terms and conditions set out in "Order" below, all of which are found hereby, after a consideration of the substantial evidence in this Cause, to be just and reasonable and will afford each owner the opportunity to recover or

receive without unnecessary expense his just and fair share of the production.

6. That in the interest of the prevention of waste and the protection of correlative rights, this Application should be granted, and the rights of all owners pooled and adjudicated.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of Oklahoma as follows:

1. That Inexco Oil Company proposes to drill a well in Section 23, Township 12 North, Range 14 West, Custer County, Oklahoma, a drilling and spacing unit for the Des Moines, Tonkawa, Cottage Grove, Atoka, Cleveland and Marchand separate common sources of supply, and to develop said unit and the common courses of supply therefor as a unit, and the rights and

equities of all oil and gas owners covered hereby are pooled, adjudicated, and determined.

2. a. That estimated well costs are:

Completed for production - $1,598,250

Completed as a dry hole - $1,194,250

b. That $1250.00 per acre cash, plus an overriding or excess royalty of 1/16 of 8/8 is a fair, reasonable and equitable bonus to be paid unto each owner who elects not to participate in said well by paying such owner's proportionate part of the costs thereof; such cash bonus plus overriding or excess royalty, when paid as set out in this Order, is satisfaction in full

for all rights and interests of such owners in the well covered hereby, except for any normal 1/8 royalty interest, as defined in 52 O.S., Section 87.1(e) (1971).

c. That an overriding or excess royalty of 1/8 of 8/8 is also a fair, reasonable, and equitable bonus to be tendered unto each owner who elects not to participate in said well by paying such owner's proportionate part of the cost thereof; such overriding or excess royalty is satisfaction in full for all rights and interests of such owner in the well covered hereby, except for any normal 1/8 royalty

interest, as defined in 52 O.S., Section 87.1(e) (1971).

PROVIDED, however, that any excess royalty, overriding royalty, or other payments out of production shall be charged against the overriding or excess royalty, or overriding royalty, as hereinabove set forth, and same shall be reduced by the amount of any such excess.

PROVIDED, further, in the event the oil and gas interest of any owner is subject to any royalty, overriding royalty or other payments out of production which create a burden on such interest in excess of the burdens set out

in paragraph 2b above, the owner of any such interest shall not be entitled to the option provided in paragraph 2b above, but shall be required to either participate or to accept the additional royalty provided in paragraph 2c above.

3. That any owner of the right to drill on said drilling and spacing unit who has not agreed with Inexco Oil Company to develop said unit and common sources of supply is accorded the following elections:

a. To participate in the development of the unit and common sources of supply by agreeing to pay such owner's proportionate part of the actual costs of the well

covered hereby and by paying, as set out herein, to Applicant such owner's proportionate part of the estimated completed for production costs thereof, as set out in paragraph 2a above, or by securing or furnishing security for such payment satisfactory to the Applicant; in all events, such owner's costs in said well shall not exceed its proportionate part of the actual or the reasonable costs thereof which shall be determined by the Commission in the event there is a dispute as to such costs; the payment of such owner's proportionate part of the estimated completed for production costs of said well,

or the securing therefor, as aforesaid, shall be accomplished within 20 days from the date of this Order, such owner's proportionate part of the costs of, and of the production from, such well to be in proportion to the number of acres such owner has in the unit; or,

b. To receive the cash bonus plus overriding or excess royalty, as set out in paragraph 2b above, which cash bonus shall be paid or tendered, if same can be paid or tendered, within 30 days from the date of this Order, or, if same cannot be paid or tendered, a fund therefore created for the use

and benefit of any owner accepting or deemed to have accepted such cash bonus plus overriding or excess royalty. Such funds deposited in said escrow or trust account shall be held for the exclusive use and sole benefit of the party or parties entitled thereto. If any payment of bonuses due and owing under the order cannot be made to any party entitled to such payment, then said bonuses, and any royalty payments received by the Operator due such party, shall be paid into an escrow or trust account and shall not be commingled with any funds of the Applicant or Operator.

c. To receive in lieu of the cash bonus plus overriding or excess royalty, as set out in paragraph 2b above, the overriding or excess royalty only as set out in paragraph 2c above.

4. That each owner of the right to drill in said drilling and spacing unit to said common sources of supply covered hereby, who has not agreed to develop said unit other than the Applicant, shall elect which of the alternatives set out in paragraph 3 above such owner accepts, said election to be made to Inexco Oil Company, in writing, within 15 days from the date of this Order; in the event any owner fails to elect within the time and in the manner as set out above which of the alternatives set forth in paragraph 3

above, any such owner accepts, then such owner is deemed to have elected to receive the cash bonus plus excess royalty, as set out in paragraph 2b above; however, if the interest is burdened in excess of a 1/16 x 8/8 over and above and normal 1/8 royalty then such owner is deemed to have accepted the alternative set out in paragraph 2c above. In the event any owner elects to do other than participate in said well by paying his pro rata share of the costs thereof, or fails to make any election provided above, such owner shall be deemed to have relinquished unto Inexco Oil Company all of such owner's right, title, interest or claim in and to the well, except for any normal 1/8 royalty interest, defined above, or other share in production to which such owner may be

entitled by reason or an election hereunder.

5. That Inexco Oil Company, in addition to any other rights provided herein, shall have a lien, as set out in 52 O.S., Section 87.1(e) (1971), on the interest of any owner, subject to this Order, who has elected to participate in the well covered hereby by paying such owner's proportionate part of the costs thereof; provided, however, that in the event an owner elects to participate in said well by paying his proportionate part of the costs thereof and fails or refuses to pay or to secure the payment of such owner's proportionate part of the completed for production costs as set out in paragraph 2a above, or fails or refuses to pay or make an arrangement with the Applicant for the payment thereof, all

within the periods of time as prescribed in this Order then such owner is deemed to have elected to receive the cash bonus plus excess royalty, as set out in paragraph 2b above; however, if the interest is burdened in excess of a 1/16 of 8/8 over and above the normal 1/8 royalty then such owner is deemed to have accepted the alternative set out in paragraph 2c above. Thereupon, the payment of such cash bonus shall be made by Applicant within 30 days after the last day on which such defaulting owner, under this Order, should have paid his proportionate part of such costs or should have made satisfactory arrangements for the payment thereof.

6. That: INEXCO OIL COMPANY
The Energy Plaza,
Suite 1000
3030 N.W. Expressway
Oklahoma City, OK 73112

is designated operator of the well and common sources of supply covered hereby and all elections must be communicated to said operator at the address above as required in this Order.

7. That Inexco Oil Company must commence operations for the drilling or other operations with respect to the well covered hereby within 180 days from the date of this Order and diligently prosecute the same to completion in a reasonably prudent manner, or this Order shall be of no force and effect, except as to the payment of cash bonuses.

8. That Inexco Oil Company or its attorney shall file with the Secretary of the Commission, within 10 days from the date of the Order, an Affidavit stating that a copy of said Order was mailed within 3 days from the date of this Order

to all parties pooled by this Order, whose addresses are known.

DONE AND PERFORMED this 6 day of June, 1984.

CORPORATION COMMISSION OF OKLAHOMA

Hamp Baker, Chairman

/s/ Norma Eagleton
Norma Eagleton, Vice-Chairman

/s/ James B. Townsend
James Townsend, Commissioner

ATTEST:
/s/ Berdee S. Holt
Berdee S. Holt, Secretary
(SEAL)

CONSTITUTIONAL PROVISIONS AND STATUTES

1. U.S. Const. amend. XIV, § 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Okla. Stat. Ann. tit. 52, O.S. § 87.1(e) (West 1991):

> The drilling of any well or wells into any common source of

supply for the purpose of producing oil or gas therefrom, after a spacing order has been entered by the Commission covering such common source of supply, at a location other than that fixed by said order is hereby prohibited. The drilling of any well or wells into a common source of supply, covered by a pending spacing application, at a location other than that approved by a special order of the Commission authorizing the drilling of such well is hereby prohibited. The operation of any well drilled in violation of any spacing so entered is also hereby prohibited. When two or more separately owned tracts of land are embraced within an established spacing unit, or where

there are undivided interests separately owned, or both such separately owned tracts and undivided interests embraced within such established spacing unit, the owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owners have not agreed to pool their interests and where one such separate owner has drilled or proposes to drill a well on said unit to the common source of supply, the Commission, to avoid the drilling of unnecessary wells, or to protect correlative rights, shall, upon a proper application therefor and a hearing thereon, require such owners to pool and develop their lands in the spacing unit as a unit.

The applicant shall give all owners whose addresses are known or could be known through the exercise of due diligence at least fifteen (15) days' notice by mail, return receipt requested. The applicant shall also give notice by one publication, at least fifteen (15) days prior to the hearing, in some newspaper of general circulation published in Oklahoma County, and by one publication, at least fifteen (15) days prior to the date of the hearing, in some newspaper published in the county, or in each county, if there be more than one, in which the lands embraced within the spacing unit are situated. The applicant shall file proof of publication and an affidavit of mailing with the

Commission prior to the hearing. All orders requiring such pooling shall be made after notice and hearing, and shall be upon such terms and conditions as are just and reasonable and will afford to the owner of such tract in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil and gas. The portion of the production allocated to the owners of each tract or interests included in a well spacing unit formed by a pooling order shall, when produced, be considered as if produced by such owner from the separately owned tract or interest by a well drilled thereon. Such pooling order of the Commission shall made definite

provisions for the payment of costs of the development and operation, which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable, including a reasonable charge for supervision. In the event of any dispute relative to such costs, the Commission shall determine the proper costs after due notice to interested parties and a hearing thereon. The operator of such unit, in addition to any other right provided by the pooling order or orders of the Commission, shall have a lien on the mineral leasehold estate or rights owned by the other owners therein and upon their shares of the production from such unit to the extent that costs incurred in

the development and operation upon said unit are a charge against such interest by order of the Commission or by operation of law. Such liens shall be separable as to each separate owner within such unit, and shall remain liens until the owner or owners drilling or operating the well have been paid the amount due under the terms of the pooling order. The Commission is specifically authorized to provide that the owner or owners drilling, or paying for the drilling, or for the operation of a well for the benefit of all shall be entitled to production from such well which would be received by the owner or owners for whose benefit the well was drilled or operated, after

payment of royalty, until the owner or owners drilling or operating the well have been paid the amount due under the terms of the pooling order or order settling such dispute. No part of the production or proceeds accruing to any owner of a separate interest in such unit shall be applied toward payment of any cost properly chargeable to any other interest in said unit.